

REMARKS***Brief Status of the Application***

In the Office Action, claims 2 and 5-9 were rejected. Claims 1, 3, 4 and 10 were withdrawn from consideration as drawn to a non-elected invention. In the present amendment, claims 11-18 have been added. Thus claims 2, 5-9 and 11-18 are pending.

Claim Objection

Claims 5-9 stand objected to as dependent upon a non-elected base claim. Claim 5 has been amended to recite dependency upon elected claim 2, thereby obviating the basis of the rejection. Claims 6 has been amended to recite dependency upon claim 5. Therefore, claims 6-9 now recite proper dependency by virtue of the claims dependency upon amended claim 5. Accordingly, applicants respectfully request withdrawal of the objection.

Rejection Under 35 U.S.C. § 112 (1)

Claim 2 stands rejected under 35 U.S.C. § 112, first paragraph. Specifically, the Office Action has rejected the claim as not enabling for the "variant and fragments" recited in the claim.

Claim 2 has been amended to no longer recite the rejected terms of "variant and fragment," thereby obviating the basis of the rejection. Further, none of the newly added claims 11-18 recite the term "variant and fragment." Accordingly, applicants respectfully request withdrawal of the rejection.

Rejection Under 35 U.S.C. § 112 (2)

Claims 2 and 5-9 stand rejected under 35 U.S.C. § 112, second paragraph. The Office Action has rejected the claims as indefinite for failing to particularly point out and distinctly claim the subject matter of the invention.

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In particular, claim 2 stands rejected as vague and indefinite because of improper Markush group language. Applicants respectfully submit that claim 2 has been amended to remove any recitation of Markush language. Further, none of the newly added claims 11-18 recite a Markush group. Accordingly, applicants respectfully request withdrawal of the rejection.

Claim 2 also stands rejected as vague and indefinite for the use of the term "variants and fragments." Claim 2 has been amended to remove any recitation of "variants and fragments." Further, none of the newly added claims 11-18 recite "variants and fragments." Accordingly, applicants respectfully request withdrawal of the rejection.

Lastly, claims 5 and 6 stand rejected as vague and indefinite because the claims as filed recite "capable of." Claims 5 and 6 have been amended to remove any recitation of "capable of." The term has been substituted with the more active term of "encoding." Accordingly, applicants respectfully request withdrawal of the rejection.

Rejection Under 35 U.S.C. § 102

Claim 2 stands rejected under 35 U.S.C. § 102(b) as anticipated by Ikegawa et al., Bui et al., and Gavin et al. The Office Action recites that Ikegawa et al. discloses a nucleic acid sequence that is 99.5 % identical to the nucleic acid of the claimed invention. The Office Action further recites that Bui et al. discloses a nucleic acid sequence that is 98.9% identical to the claimed invention. Similarly, the Office Action recites that the Gavin et al. discloses a nucleic acid sequence that is 88.3% identical to the claimed invention.

Claim 2 has been amended to no longer recite % identity. Further, none of the newly added claims recite percent identity or claim a polynucleotide with % identity to SEQ ID NO:1. Thus, the polynucleotide set forth in Ikegawa et al., as well as the polypeptide it encodes, are no longer encompassed by the claims of the instant application. Therefore, each and every element of the claimed invention is

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not contained in the cited reference, and accordingly, applicants respectfully request withdrawal of the rejection.

Additionally, and as indicated above, claim 2 has been amended to remove any recitation of "variant or fragment" language. Further, none of the newly added claims recite "variant or fragment" language. Therefore, neither Bui et al. nor Gavin et al. disclose each and every element of the claimed invention. Accordingly, applicants respectfully request withdrawal of the rejection.

Rejection Under 35 U.S.C. § 103

Claims 5-9 stand rejected under 35 U.S.C. § 103 as obvious over Ikegawa et al. in combination with Sambrook et al.

As described above, claim 2 has been amended to no longer recite % identity and therefore the claimed invention is no longer anticipated by the Ikegawa et al. Thus, because claim 2 is not anticipated by Ikegawa et al., dependent claims 5-9 cannot be held as obvious in view of Ikegawa et al. in combination with Sambrook et al. because each and every element of claims 5-9 are not disclosed in the combination of the cited references. Accordingly, applicants respectfully request withdrawal of the rejection.

Summary

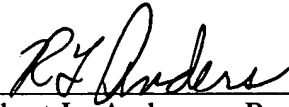
In view of the foregoing amendments and remarks, applicants submit that this application is in condition for allowance and respectfully request early and favorable notification to that effect. If it would expedite prosecution of this application, the Examiner is invited to confer with either of applicants' undersigned attorneys.

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Applicants reserve the right to file divisional or continuation applications directed to any of the non-elected claims, cancelled claims, or any other subject matter supported by the specification.

Respectfully Submitted,

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